

Chapter 7 - Civil Rights

Fair Housing and Civil Rights activities are required of all IHFA award recipients. The following chart will provide a guide as to which activities are required, based on the award recipient, program funding source, and type of project. All required actions are defined and discussed in the preceding pages of this section.

Fair Housing & Civil Rights Action Chart

LUG = Local Unit of Government NFP = Not-for-profit

Action	Action to Affirmatively Further Fair Housing	Fair Housing Brochure to all Beneficiaries	Fair Housing Poster	IHFA Affirmative Marketing Procedures	MBE/WBE Solicitation
CDBG/HDF					
LUG - Owner-Occupied Rehab	X	X	X		X
LUG - Rental Rehab	X	X	X		X
LUG - Transitional Housing	X	X	X		X
LUG - Emergency Shelter	X	X	X		X
LUG - Youth Shelter	X	X	X		X
LUG - Voluntary Acquisition	X	X	X		X
LUG - Seasonal Farmworker Housing	X	X	X		X
HOME					
LUG - Owner-Occupied Rehab	X	X	X		X
LUG - Rental Rehab	X	X	X	X	X
LUG - Transitional Housing	X	X	X	X	X
LUG - Emergency Shelter	X	X	X		X
LUG - Housing Creation/Conversion	X	X	X	X	X
NFP - Rental Rehab		X	X	X	X
NFP - Homebuyer - Rehab		X	X	X	X
NFP - Homebuyer - New Construction		X	X	X	X
NFP - Rental – New Construction		X	X	X	X
NFP - Transitional Housing		X	X	X	X

Fair Housing

The Fair Housing Act states that it is illegal to discriminate against any person because of race, color, religion, sex, disability, familial status, or national origin in:

- the sale or rental of housing or residential lots;
- advertising the sale or rental of housing;
- the financing of housing;
- the provision of real estate brokerage services; and
- the appraisal of housing.

The Fair Housing Amendments Act of 1988 Final Committee Report to the House of Representatives (100-711) dated June 17, 1988 provides the background information to the Fair Housing Law and Committee intentions when submitted to Congress. The Fair Housing Amendments became Public Law 100-430 on September 13, 1988 to amend Title VIII, commonly called The Civil Rights Act of 1968. This legislation revised certain procedures and implemented new protections and enforcement. On Monday, January 23, 1989, the Federal Register contained the Final Rule for implementation of the Fair Housing Amendments Act of 1988. The effective date of this legislation was March 12, 1989 with the specific provisions for new construction effective March 13, 1991.

Fair Housing legislation is clear in regard to discriminatory practices and penalties. The law does not intend to prohibit property owners, managers, and administrators from valid inquiries into an applicant's ability to meet lease requirements and/or program eligibility requirements as set forth in Federal or State programs or in a Tenant Selection Criteria. However, there are certain areas that owners, managers, and administrators must clearly understand in regard to legitimate questions and disallowed inquiries. These areas are:

1. Independent Living - An owner, manager, or administrator should not attempt to assess whether an applicant is capable of independent living but only whether the applicant meets essential eligibility requirements. If an applicant requires supportive services but does not ask that they be provided, the need for supportive services should not be considered a factor in determining eligibility. If the provision of supportive services is part of the housing program, then these services should be provided in a non-discriminatory manner. However, no provider is required to take any action which would fundamentally alter the nature of the program in order to accommodate the disability of an applicant or tenant.
2. Restriction of Children/Disabled in Housing: Evacuation Safely - There can be no restriction as to where persons may reside in housing with the exception of Federal or management priorities for certain adapted or accessible units. Accepting or rejecting applicants on the basis of the ability to evacuate safely is not allowed.
3. Legal and Illegal Questions - The Fair Housing Law clearly defines legal and illegal questions for all applicants of all housing in the United States. It is unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person, has a disability or to make inquiry as to the nature or severity of a disability of such a person.

However, the following inquiries can be made, **provided these inquiries are made to all applicants, whether or not they have disabilities:**

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;
- Inquiry to determine whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
- Inquiry to determine whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

A manager or owner is never required to make available a dwelling to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals, or whose tenancy would result in substantial physical damage to the property of others.

Award Recipient Required Actions

When an award recipient is awarded a HOME or CDBG award through IHFA, certain actions must be taken by the award recipient to comply with Fair Housing regulation and IHFA policy.

1. All local units of government/award recipients are required to take an action to affirmatively further fair housing. **The action(s) must reach the general community at-large and not be limited to low-moderate income residents only.** IHFA strongly encourages each local unit of government to execute a Fair Housing Ordinance during the life of the award as an action to affirmatively further fair housing (a sample Fair Housing Ordinance is located as Exhibit B of this chapter). However, if a Fair Housing Ordinance has already been executed prior to the execution date of the HOME or CDBG award, the local unit of government in receipt of the IHFA award must take a different action to affirmatively further fair housing.

Suggested actions are as follows:

- Undertake fair housing enforcement (i.e. complaint processing);
- Work actively with existing entities (public or private non-profit) whose goal is to further fair housing;
- Display fair housing exhibits at local public exhibitions (County Fairs, Festivals, etc.);

- Review local zoning laws and procedures to determine whether the laws contribute to, or detract from, fair housing;
- Use local resources to assess existing public opinion about the status of fair housing organizations, public and private community centers, civil rights groups, and organizations that represent minorities, women, families, senior citizens, and persons with disabilities.
- Develop public information and educational programs promoting fair housing and provide fair housing information to the following types of groups:
 - citizen groups concerned with housing issues (fair housing groups, tenant associations, builders, real estate agents/brokers);
 - organizations representing specific population groups (minorities, women, senior citizens, persons with disabilities); and
 - other local organizations (advocacy groups, unions, voters' leagues).

Documentation of the Fair Housing action taken by the unit of government/award recipient must be maintained in the award recipient's award file. Therefore, it is the responsibility of the award recipient to provide the proper documentation for the award files which will be monitored by IHFA.

2. All HOME and CDBG award recipients are required to post the Fair Housing Opportunity poster (shown reduced as Exhibit D of this chapter) at public buildings as evidence of the award recipient's fair housing policy. Also, if a subrecipient is associated with an IHFA award, the subrecipient must also post the poster in its offices. Finally, if the project involves a public facility or a building with a common area, such as a leasing office, the fair housing poster must be hung conspicuously at those locations as well. Copies of this poster may be obtained from your IHFA Compliance Monitor. Award recipients must also include the Fair Housing logo on all client correspondence (confirmation letters, brochures, leases, etc.) This logo is available on our website (www.indianahousing.org).
3. Award recipients must provide all beneficiaries the HUD brochure entitled "You May Be A Victim Of..." Documentation of the client's receipt of the brochure must be maintained in the client's file. Therefore, the award recipient is responsible for creating a receipt form for the beneficiary to sign as receipt of the Fair Housing brochure. Copies of the brochure are available through your IHFA Compliance Monitor.
3. All HOME award recipients with rental and homebuyer projects with five or more units must certify compliance with the IHFA Affirmative Marketing Procedures (a copy of the IHFA Affirmative Marketing Procedures is provided as Exhibit C of this chapter). HOME award recipients with rental and homebuyer projects must provide IHFA with a signed copy of the IHFA Affirmative Marketing Certifications and Procedures before IHFA will provide the award recipient with a Notice of Release of Funds.

Minority and Women Business Participation

Introduction

The civil rights laws, regulations, and executive orders are designed to protect individuals from discrimination on the basis of race, national origin, religion, color, sex, age and disabled status. These laws, regulations, and executive orders, as they apply to the HOME or CDBG program, protect individuals from discrimination in housing, the use of public facilities and services, benefits created by HOME or CDBG projects, and employment and business opportunities.

The following is a summary of the regulations.

Title VI - Civil Rights Act of 1964

Title VI provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. It directs each federal department or agency that extends financial assistance to any program or activity through awards, loans, or contracts, except contracts of insurance or guaranty, to issue rules or regulations to be approved by the President to carry out the purposes of the Title. Title VI authorizes the termination or the refusal to grant or continue federal assistance under any program or activity involving a recipient receiving an express finding of a failure to comply, but only after due notice, an opportunity for a hearing, and a determination that compliance cannot be secured by voluntary means.

Title VII – Civil Rights Act of 1964 (as amended)

This provision prohibits discrimination in employment on the basis of sex.

Title VIII – Civil Rights Act of 1968

Title VIII prohibits blockbusting, or discrimination in the sale or rental of dwellings, the financing of housing, or advertising, Title VIII makes it unlawful to deny any person access to, membership, or participation in any multiple listing service or real estate brokers' organization for discriminatory reasons. The law is applicable in stages and ultimately applies to all dwellings except those which are specifically exempt. Title VIII generally does not apply to the sale or rental of a single family house by a private individual owner who does not own more than three such single-family houses at any one time. After December 31, 1969, the sale or rental of any such single-family home is exempted from the application of Title VIII only if it is sold or rented without the use of a broker and without discriminatory advertising. The act does not apply to rooms or units in dwellings containing living quarters occupied by not more than four families living independently of each other if the owner occupies one of such quarters as his or her residence.

Also exempted is the sale or rental of dwellings owned or operated by religious organizations, for other than a commercial purpose, to persons of the same religion unless membership in such religion is restricted on account of race, color or national origin. Neither does Title VIII prohibit a private club, not open to the public and providing lodging which it owns or operates for other than commercial purposes, from limiting rental or occupancy to its members.

Section 3: Housing and Urban Development Act of 1968

Section 3 provides that to the greatest extent feasible, training and employment opportunities shall be made available to low-income residents of project areas and that contracts be awarded to small businesses located within the project area or owned in substantial part by project area residents.

Section 109: Housing and Urban Development Act of 1974

Section 109 provides that no person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under this title.

Section 504: Rehabilitation Act of 1974

Section 504 provides that no otherwise qualified disabled individual in the United States, as defined in Section 7(6), shall, solely be reason of this disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Age Discrimination Act of 1975

The Act provides that no person in the United States on the basis of age shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Executive Order 11063

Executive Order 11063 provides that no person on the basis of race, color, religion, sex or national origin, shall be discriminated against in:

- Housing (and related facilities) provided with federal assistance.
- Lending practices, with respect to residential property, when such practices are connected with loans insured or guaranteed by the federal government.

Executive Order 11246, as amended by Executive Order 11375

Executive Order 11246, as amended by Executive Order 11375, provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in excess of \$25,000.

Executive Order 12138: Women Business Enterprise Policy

For purposes of this Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special needs of women business enterprises, establishing incentives to promote business or business-related opportunities for women business enterprises, collecting and disseminating information in the support of women business enterprises and ensuring to women business enterprises knowledge of any ready access to business-related services and resources. In implementing this Order an agency undertakes to use or to require compliance with numerical set-asides or similar measures. It shall state the purpose

of such measure and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.

Civil Rights Applicability

Civil rights laws, regulation, and executive orders are applicable to all award recipients regardless of the percentage of HOME or CDBG funded participation. Requirements included here are in addition to the community's existing civil rights requirements.

To assure compliance with these requirements and to provide an adequate record by both the award recipient and its contractors, all policies and procedures must be fully documented. In addition, the award recipient must fully document the characteristics of the population of the project area to determine the specific actions necessary to ensure civil rights compliance.

The following section outlines specific required and suggested civil rights policies and procedures.

Civil Rights Policies and Procedures

The award recipient must document compliance with civil rights policies and procedures in four general areas:

1. Employment
2. Housing
3. Benefits of Project
4. Contracts

1. Employment

The award recipient must keep records concerning any persons it hires, indicating that the hires were on an equal opportunity basis. To document equal employment opportunity efforts, all advertisements for employment must state that the award recipient is an equal opportunity employer. The award recipient must retain copies of the advertisements in its files. IHFA also encourages the award recipient to prepare and implement an affirmative action hiring plan. Finally, records of the number of persons employed must be kept by race, sex, and income. If any HOME or CDBG funds go into any administrative arm or department of the award recipient, all departments of the award recipient become subject to the civil rights requirements under the HOME or CDBG program.

Other suggested procedures for the award recipient to follow in demonstrating equal employment opportunity in its hiring, firing and promotion practices are:

- a. Document job descriptions and qualifications required of applicants and reasons for rejection or acceptance of each applicant.
- b. Provide the Indiana Employment and Training Services with job descriptions for all open positions and request the referral of minority and female applicants. Copies of all such correspondence should be kept in the award recipient files.

- c. Post the equal employment opportunity (EEO) posters prescribed by HUD and U.S. Department of Labor (DOL) at the city hall or other public buildings notifying the community that the award recipient is an equal opportunity employer. These posters are routinely sent out along with a federal wage decision, or can be obtained on request from the IHFA Compliance Monitor. The award recipient must enter its name and address in the top box on the EEO poster. In the next two boxes the award recipient must enter the name and address of IHFA and the HUD Area Office:

Indiana Housing Finance Authority
30 South Meridian Street
Suite 1000
Indianapolis, IN 46204

U.S. Department of Housing and Urban Development
Fair Housing and Equal Opportunity Division
151 North Delaware Street
Indianapolis, IN 46204

2. Housing

If the award recipient has a HOME or CDBG funded housing project, it must affirmatively promote fair housing. Regardless of the HOME or CDBG project undertaken by the community, the community is required to not discriminate in any area related to housing.

An award recipient with a housing assistance project is required to post the fair housing opportunity poster at all work sites and at the city hall or other public buildings. For award recipients with no housing provision projects (e.g., housing planning only), this poster should still be posted in public buildings as evidence of the award recipient's fair housing policy. Copies of this poster may be obtained from the IHFA Compliance Monitor.

3. Benefits of Project

The award recipient must keep records on the number of minority, female, and low-to-moderate income persons or families applying for and benefiting from the project. Records should include the make-up of the households being assisted, either individually or by target area.

A direct benefit activity is an activity which requires the beneficiary to submit an application or complete a personal record as an integral part of participating in the program. Individual household information will be available for direct benefit activities. For example, in a housing rehabilitation program, an application would be an integral part of providing loans or awards to households. For such individual assistance, the award recipient should require each applicant to provide a signed declaration of the race, sex, and income status of his or her household. The award recipient must also require the applicant to provide written verification of the income status of the household.

Beneficiary information must be obtained and documented in a form that can be readily summarized for inclusion in the Close-out Documentation submitted to IHFA at the end of the award.

4. Contracts

- a. All applicable civil rights language must be included in award bid documents and contracts with contractors or professional service firms. The procurement chapter (Chapter 12) lists the required provisions that must be included in the contracts and bid documents. The contract and bid documents should also contain the requirements for a Section 3 plan and, when applicable, an affirmative action hiring plan.

The award recipient must make sure that all of the above items are completed prior to the actual award of the contract, or within 15 days of the award and before the notice to proceed is sent to the contractor. This includes, as applicable, the completion of the affirmative action hiring plan, the Section 3 plan, the signing of the above and the non-segregated facilities form. This would also be done by all contractors and subcontractors.

- b. The award recipient's contractors and subcontractors may be subject to the affirmative action requirements. All contractors and subcontractors holding any federal or federally-assisted construction contract in excess of \$10,000 are subject to the provisions of 41 CFR Part 60-4, Construction Contractors - Affirmative Action Requirements, which specifies language to be included in all applicable bid documents and contracts and the requirements of contractors subject to those regulation.
- c. Contracts subject to 41 CFR Part 60-4 include appropriate minority and women workforce participation goals. Indiana has adopted a state goal of 10% participation for minority and/or women-owned business enterprises (MBE/WBE) on all contract requirements. Please refer to Section E, for further discussion of MBE/WBE participation.
- d. Non-construction contractors and construction contractors with 50 or more non-construction employees and one or more contracts totaling \$50,000 in a 12-month period and which meet the other conditions of 41 CFR 60-2 are subject to the affirmative action requirements of 41 CFR Part 60-2, Affirmative Action Programs.
- e. 41 CFR 60-1.21 requires each award recipient to include in the invitation for bids for each formally advertised non-construction contract, or state at the outset of negotiations for each negotiated non-construction contract, that if the award should exceed \$1 million, the prospective contractor (and certain subcontracts) will be subject to a compliance review before the award of the contract.
- f. Contractors and subcontracts must post the appropriate equal opportunity and fair housing posters at all work places, regardless of the type of project. The EEO poster should be completed by placing the contractor's name and address in the top box. In the next two boxes the contractor should enter the names and addresses of IHFA and the HUD Field Office as listed on page 5. The fair housing opportunity poster should be posted at all work places when a housing assistance project is involved.
- g. The award recipient must also inform its contractors and subcontractors of their requirement to file DOL form CC-257, "Monthly Employment Utilization Report". For all contracts and subcontracts less than \$100,000, this report must be filed with the award recipient each month by each contractor and subcontractor. For contracts equal to or greater than \$100,000, this form must be filed each month with both the award recipient and the DOL area office. This form provides the award recipient with equal employment monitoring information and must be kept in the award recipient's files as evidence of this monitoring. A copy of this form may be obtained from the appropriate IHFA Compliance Monitor.
- h. All contractors under the program who: (1) are not exempt under 41 CFR 50-1.5; (2) have 50 or more employees; and (a) are prime contractors or first-tier subcontractors having a contract or contracts totaling \$50,000 or more in any 12-month period or (b) serve as depositories of government funds in any amount, or (c) are financial institutions which are issuing and paying agents for U.S Savings Bonds and Notes, are required by 41 CFR 60-1.7 to annually file on or before March 31 the Employer Information Report EEO-1 (Standard Form 100) with the DOL area office. Each contractor required to submit such report shall file it within 30 days after it is awarded a contract unless the

contractor has submitted such a report within 12 months preceding the date of the award. To obtain a copy of this form with instructions, contact the appropriate IHFA Compliance Monitor.

Pre-Construction Conference (Davis Bacon projects only)

The award recipient must hold a pre-construction conference with the prime contractors and available subcontractors, apprising them of their responsibilities and obligation included in the contract documents. Items discussed and attendance at this conference must be documented in the form of minutes, a copy of which must be retained for each pre-construction conference held for each construction project. For further discussion of the pre-construction conference please refer to Labor Standards and Procurement sections, respectively. The following Civil Rights items (discussed previously in this chapter) should be explained and discussed at the pre-construction conference.

1. Title VI - Civil Rights Act of 1964
2. Section 3 - Housing and Urban Development Act of 1968
3. Section 504 - Rehabilitation Act of 1974
4. Executive Order 1063
5. Executive Order 11246, as amended by E.O. 11375
6. 41 CFR Part 60-4 - Construction Contractors - Affirmative Action Requirements, as applicable
7. Female and Minority Participation Goals, as applicable
8. 41 CFR Part 60-2 - Affirmative Action Programs, as applicable
9. 41 CFR Part 60-1.21, as applicable
10. Required Posters: Two for equal employment opportunity and one for fair housing opportunity
11. DOL Form CC-257 - Monthly Employment Utilization Report
12. Employer Information Report, EEO-1 (Standard Form 100)
13. Signatures required of contractors on contract and certifications.

Minority and Women Business Participation

Minority-owned and women-owned business enterprises (MBE/WBE's) shall have the maximum feasible opportunity to participate in the performance of contracts under federal award programs. Award recipients shall exercise their "best efforts" to ensure that MBE/WBE's are given the opportunity to participate in HOME or CDBG-funded contracts, including contracts for services, supplies and construction activities. Indiana has adopted a goal of 10% aggregate participation for minority- and/or women-owned business enterprises in HOME or CDBG-funded projects.

A minority- or women-owned business enterprise is defined for this program as *a business which has been established for at least one year and is 51% owned, operated and controlled by minorities or women.* Corporation or partnerships formed merely to qualify as an MBE or WBE for purposes of this program will not be considered minority or women-owned business enterprises.

Award recipients are required to maintain documentation supporting their "best efforts" to achieve the state goal of 10% minority and/or women-owned business enterprise participation on each HOME or CDBG-funded project. To document "best efforts: to attain the 10% goal, the

following steps should be taken to solicit bids form and encourage participation by minority- or women-owned business enterprises:

1. Where legal notice is required by law, include language notifying bidders of the 10% MBE/WBE participation goal on the project.
2. Contact IHFA or the Indiana Department of Administration Minority Business Development Division for a referral list of firms in the categories of work needed for the project, including professional services, supply, and construction services.
3. Contact at least two (2) MBE/WBE firms from the referral list, notifying them of the impending bidding opportunity and how to participate.
4. If award recipients anticipate the use of subcontractors or additional purchasing contracts for supplies, then the referral list of qualified minority- and women-owned businesses should be disbursed to all prime contractors at this conference. Award recipients should supply a copy of the plans and specifications as well as a list of the organizations that will have plans and specification on file.
5. Award recipients must maintain documentation supporting their “best efforts” for monitoring and auditing purposes. **Award recipients must document solicitation of MBE/WBE firms through Certified Mail receipts, Certificates of Mailing, or receipts from hand-delivery of notices.**